IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 21141 of 2006(P)

OS.82/1995 of MUNSIFF COURT, KALPETTA
CMA.15/2002 of SUB COURT, SULTHAN BATHERY

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PETITIONERS:

1. A.P.MUHAMMED, S/O.SULAIMAN,
   PUTHUMALA, VELLARIMALA AMSOM & DESOM,
   VYTHIRI TALUK, WAYANAD DISTRICT.

2. ERANHIKKAL MOHAMMED, H/O.NABEESA,
   PUTHUMALA, VELLARIMALA AMSOM & DESOM,
   VYTHIRI TALUK, WAYANAD DISTRICT.

3. ERANHIKKAL SULAIMAN, S/O.MOHAMMED,
   DO. DO.

4. KADEEJA, W/O.ABDURAHIMAN,
   DO. DO.

5. SUHARA, D/O.MOHAMMED,
   DO. DO.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

1. HARRISONS MALAYALAM LTD.,
   CENTINAL ROCK ESTATE, VELLARIMALA VILLAGE,
   VYTHIRI TALUK, WAYANAD.

2. PATHUMMA, KASHMEERKUNNU,
   VELLARIMALA AMSOM & DESOM, VYTHIRI TALUK,
   WAYANAD DISTRICT.

R1 BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE DECREE IN O.S. NO: 82/95 DT. 12.1.2000 PASSED BY THE MUNSIFF COURT, KALPETTA

EXT.P1A: -DO- OF THE JUDGMENT DT. 12.1.2000 IN O.S.NO; 82/95 OF THE MUNSIFF COURT, KALPETTA

EXT. P2:-DO- OF THE ORDER I.A. 310/2000 IN O.S. 82/95 DT. 25.1.202 PASSED BY THE MUNSIFF COURT, KALPETTA

EXT.P3: -DO- OF THE JUDGMENT IN C.M.A. NO: 15/2002 DT. 24.2.2006 PASSED BY THE SUB COURT, SULTHAN BATHERY

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 21141 OF 2006

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Dated this the 16th day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the judgment in CMA 15/02 of the Subordinate Judge, Sulthan Bathery. The writ petitioners are the defendants in O.S.82/95 which was pending before the Munsiff Court, Kalpetta. The suit was one for recovery of possession on the strength of title. It is contended that one of the defendants was away at Kadampuzha in connection with his avocation and his sister the other defendant was laid up with paralysis for more than 15 years and that the 3rd defendant died and therefore on account of the reasons beyond their control they could not attend the Court when the matter was posted and so the suit was decreed exparte.

2. Both the Courts below found that there were other defendants and they could have made arrangements to take steps or to proceed further with the matter. It is true that

the party could have acted in a more prudent manner. It is a settled position of law that the broad principles of natural justice demands that an opportunity should be given to the parties to conduct the case on merits. It is also settled that if there is gross negligence or grave mis-conduct, it should not be allowed. This Court in the decision reported in ***Sreedhara Kurup v. Mickel (1968 KLT 599)*** also held that if the petitioners show their anxiety and file an application for restoration in time and some evidence is let in then the Court has to use its discretion in a way bearing in mind the broad principles of natural justice. It is true that the evidence tendered in this case would indicate that they have come forward before the Court within the stipulated period for setting aside the exparte decree. They also tendered some evidence in the right direction and a cumulative effect of all these things would reveal that they were interested and were eager enough to prosecute the case. It is true that inconvenience has been caused to the other side and it can always be compensated by ordering costs. Therefore, in the facts and circumstances of the case and the materials available I am inclined to grant an

opportunity to the defendants to contest the case on merits. Therefore, the orders under challenge are set aside on condition that they make a payment of Rs.2,000/- as cost to the plaintiff in the case within a period of one month from today either by depositing or paying the cost before the Court below. If the amount is paid within 30 days as ordered, the Court below shall set aside the exparte decree and restore the suit back to file and proceed to dispose of the matter in accordance with law and being a suit of the year 1995 it shall try to complete the trial within a period of six months from the date of restoration of the case. In case there is default in making the payment the petition will automatically stand dismissed. The parties are directed to appear before the Court below on 16.11.07.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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